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Die kalifornische Landerwerbfrage.

Von Dr. **G. C. Butte**, Heidelberg.

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Die kalifornische Landerwerbfrage.

Von Herrn Dr. jur. **Georg C. Butte** in Heidelberg.

As an American and a native Californian, I have no hesitancy in expressing my conviction that the California Alien Land Act of May 19, 1913 (so-called Webb bill) is an unwarranted affront directed against an innocent people, which would not have occurred at this time but for the existence of a systematically cultivated prejudice. If the supremacy of the Caucasian race in the United States of America or in California is threatened now or remotely by the 70000 Japanese in the United States (their number has in recent years steadily decreased), the law aforesaid has contributed little, if anything, to avert the calamity. The danger, if it exists in California, is a common danger which involves the neighboring states and indeed, the whole nation as well. The only way of meeting an „Asiatic Invasion" effectively is by national action of a different sort, which the State of California made no effort to induce. In fact, when Secretary of State Bryan acting by direction of the President, appeared before the California legislature on April 28, 1913, to submit a proposal looking to national co-operation and the settlement of the race issue on a broader, more permanent and more friendly basis, he was received with but formal courtesy; and after five days of vain effort on his part, his proposals were all rejected, and the legislature proceeded with perhaps all the more zest to enact a bill of its own framing. California must have its pound of flesh. But there's been some blood-letting, too, and the practical question is: Who is responsible and how shall amends be made?

The State of California has for many years been compelled to bear the brunt of the social and economic difficulties attendant upon the immigration from Asia. The Asiatics (Chinese, Japanese, Koreans, Hindus, Malays, Annamese and Siamese) who came to our shores were, with few exceptions, recruited from the lower strata of society; they were either too ignorant or too timid or too unwilling or racially too different to adopt American habits and standards of life. They remained and still remain a separate people, living in isolated communities. The great mass of them, ignorant of the language and customs of the country, are fit only to perform manual labour. This brings the Asiatics into competition with Caucasian labourers, the tendency of which has been to lower not only the scale of wages but also „the dignity of labour". The latter, like our „equality of opportunity" is justly a sacred ideal of American life. As an ideal it is naturally largely subjective, and the American labourer is perhaps alone qualified to know when it is jeopardised.

After the Burlingame Treaty of July 28, 1868, which extended to the Chinese the right of entry and settlement in the United States, the intensity of the American labourer's hostility to the Chinese grew as the number of Asiatic immigrants increased. This hostility infected all classes of society and found vent in constant petty outbreaks against the Chinese. I well remember that during my boyhood in San Francisco it was thought quite commendable to stone any lonely Chinaman, and highly amusing to see poor „John" draw his whistle and blow for the policeman who never came. This hostility was further reflected in all sorts of discriminatory legislative enactments of the California authorities, all of which however, that came before the courts for review, were declared null because in conflict with existing treaties or with the XIV Amendment to the constitution of the United States guaranteeing to all persons „the equal protection of the laws". In the Immigration Treaty of November 17, 1880, between China and the United States, it is provided that the United States „may regulate, limit, or suspend the coming or residence" of Chinese la-

bourers, „but may not absolutely prohibit it". Accordingly, the Congress of the United States restricted this immigration by the Exclusion Acts of May 6, 1882, and July 5, 1884, for a period of ten years from the date of the latter act. The period of restriction was extended for another ten years in 1892, and again by the Act of April 29, 1902, indefinitely. In the agitation for this legislation California (and in California the labour unions) has uniformly taken the lead[1]).

In the same year (1894), in which the United States signed a treaty with China forbidding absolutely for ten years the immigration of Chinese labourers[2]), it negotiated with Japan the treaty which introduced Japan into the family of nations, and conferred upon all Japanese all the rights of trade and residence in the United States enjoyed by subjects of the most favoured nation[3]). The latter treaty represents but another manifestation of the traditional close friendship between the United States and Japan, which began in 1854 when Commodore Perry landed at Kurihama and has been signalised in numerous international incidents since. But this treaty, while recognizing as a principle the equality of both nations, contained the following reservation in Article II: „That the stipulations contained in this and in the preceding article do not in any way affect the laws, ordinances and regulations with regard to trade, the immigration of labourers, police and public security, which are in force or which may hereafter be enacted in either of the two countries". The treaty had hardly become effective when the United States began to exert diplomatic pressure upon the Japanese government to restrict the immigration of Japanese labourers into the United States

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[1]) Even to the framing of the bills. Cf. Senate Report No. 776, 57 Congress, 1st Session, page 6.

[2]) Treaty of March 21, 1894. See *Strupp*'s Urkunden zur Geschichte des Völkerrechts (1911) Vol. II, page 284.

[3]) Treaty of November 22, 1894, effective for twelve years from July 17, 1899. It is true the British treaty antedates the American treaty by some months (July 16. 1894) but it appears that the United States had first declared its readiness to sign such a treaty conditioned only upon some one other nation doing likewise. See *Revue générale de droit international public* Vol. I (1894), p. 562 and Vol. II (1895), p. 614.

proper, which Japan in 1901 sought to accomplish in some degree by denying them passports. But the flood of Japanese labourers into the Hawaiian Islands (American territory), where the sugar planters sorely needed labour, continued practically unabated. From here, lured on by the hope of higher wages, they re-emigrated without difficulty in large numbers to the mainland[1]), where their services were likewise much demanded by the orchardists of the Pacific coast to fill the gap created by the rigid enforcement of the Chinese exclusion acts. Judged by outward appearances and their standard of living, there is essentially no great difference between Japanese and Chinese immigrant labourers. It is unfortunate for Japan and for the United States that „a hundred Japanese rice-field hands are seen in America to one Japanese gentleman. Thousands of men who never knew a Japanese merchant or artist or scholar have come in contact with Japanese draymen or laundrymen“ [2]).

After the Russo-Japanese war, there occurred an apparent revulsion of sentiment in the United States as regards Japan and the Japanese [3]). Traditional friendship was apparently[4]) thrown to the winds, and the same tactics of petty persecution and insult were practiced on the Pacific coast as had previously been employed against the Chinese. Japanese merchants were boycotted, and their shops attacked. Japanese citizens, the most distinguished of them, were stoned in the streets of San Francisco[5]). The resolution of the Board of Education of San Francisco (which was then governed in all its departments by the Labor Party) of October 11, 1906, requiring the children of all Japanese (even those who were born in the United States

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[1]) Cf. *Aubert, Louis,* „Américains et Japonais“ (1908), pages 100, 101, 105.

[2]) *David Starr Jordan* in „War and Waste“ (1913), page 145.

[3]) The „Japanese and Korean Exclusion League“ was founded in 1905 with the purpose of obtaining legislation by the United States for the absolute exclusion of all Asiatics. It has conducted a most active and at times vicious propaganda.

[4]) I say „apparently“ because the personal hostility to the Japanese is confined to the Pacific Coast states — one might even say to California. The American nation as a whole is loyal to its traditional friendship.

[5]) Cf. *Aubert,* op. cit., page 119.

and were eligible to American citizenship) to attend a separate school called „the oriental public school“ was not enacted because of any public emergency, but because it constituted a declaration to the world in general and to Japan in particular of the inferiority of the „mongol race“ — a declaration doubly offensive to the descendants of the hairy Ainu. It hurt — it hurt dreadfully. These five insignificant demagogues of the San Francisco school board little dreamed that their action would penetrate to the quick of Japanese national honour — that they would wound the inmost soul of the Japanese people. Japan has definitely committed itself to the adoption of Western institutions. A high sense of honour „which has ever been one of their mainsprings of action“ (Réclus) has inspired and supported the Japanese in the consequent very difficult social evolution that has taken place and is still taking place among them. As the youngest member of the Völkerrechtsgemeinschaft, Japan's position is not yet permanently assured. As the first Asiatic nation to join the European concert of Christian nations, she is conscious that she is still in a sense on trial. Little wonder then that they, who are so highly sensitive individually, should under these circumstances be also highly sensitive as a nation; and little wonder that they resent the imputation of inferiority or of incompatibility necessarily involved in any legislation that singles them out for discrimination. The offensive school regulation was withdrawn after a sharp controversy between the city and the federal government, but it left its scar[1]).

The price which Japan was obliged to pay for the modification of the discriminatory and derogatory school ordinance was its assent to a more rigid exclusion of Japanese labourers from „the continental territory of the United States“. The

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[1]) As to the school controversy, see *Barthélemy, Revue générale de droit international public,* Vol. XIV (1907), pages 637 ff.; American Journal of International Law, Vol. I, pages 150 and 273; *Aubert,* op. cit., pages 109 ff.; *Baty,* International Law (1909), pages 60—62. As an evidence of the acuteness of the controversy one need only recall President Roosevelt's declaration in his annual message to Congress (Dec. 1906) that „in the matter now before me affecting the Japanese, everything that is within my power to do will be done, and all forces, military and civil, of the United States which I may lawfully employ, will be so employed.“

general immigration law of February 20, 1907, afforded the Congress of the United States the opportunity of embodying, as an act of general legislation, a provision authorizing the President to refuse admission to the citizens of „any foreign government“ who re-emigrated from another country or the colonial possessions of the United States to the United States proper „to the detriment of labour conditions therein“. In March 1907 the Japanese government declared its willingness and intention to prevent the emigration of Japanese labourers to the continental territory of the United States by refusing them passports[1]). And this agreement has been loyally kept. The act aforesaid contains no invidious distinction that would offend the amour propre of the Japanese people; at the same time, Japanese labourers are effectually excluded from the United States by Japan itself. Thus specific legislation excluding Japanese subjects in express terms, which would put them on a par with Chinese, was rendered unnecessary. Good feeling was restored on both sides. When after the annexation of Korea in August 1910, Japan denounced all its treaties of commerce and navigation, it found the United States quite ready to eliminate from the new treaty the reservations of Article II of the Gresham-Kurino treaty of 1894. These remnants of an ancient inferiorty no longer attached to a victorious and progressive nation. The Knox-Uchida treaty of February 21, 1911 (like the arbitration treaty of 1908) constitutes a generous recognition of Japan's position as a full equal in the sisterhood of states[2]).

Despite the fact that the inflow of Japanese labourers into California had long ago ceased, owing to Japan's strict watch-

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[1]) Passports were to be denied to all intending emigrants of the labouring class except 1) such as had already been residents of the United States and were returning; 2) the parents, wives or children of Japanese resident in the United States; and 3) such as had already acquired a right in agricultural land in the United States.

[2]) The Knox-Uchida treaty makes no attempt to regulate the immigration question. This is treated as disposed of by the arrangement of 1907. For an interesting discussion, see *Strupp, „L'Immigration Japonaise aux Etats Unis“* in the *Revue générale de droit international public*, Vol. XVIII (1912), pages 680 et seq.

fulness, and that the number of Japanese resident in California was steadily decreasing[1]), every biennial session of the legislature of California since 1907 has busied itself with discriminatory laws aimed at the Japanese[2]). No amount of specious argument can disguise the fact that these were all prompted by a latent racial prejudice, which has been fanned by the agitation of the past seven or eight years into a veritable mania. The advent of the Democratic party to power in the government at Washington in 1913 furnished the anti-Japanese agitators new hope. This party is pledged not to interfere with the powers reserved in the federal constitution to the component states of the Union: it is the „States rights" party. Its leaders coming largely from the Southern states, populated with some eight million negroes, are familiar with race antagonisms, and, it was supposed, would lend a sympathetic ear to the Macedonian cry from California[3]).

When the legislature convened at Sacramento in January of this year, some thirty five bills were introduced seeking to impose various restrictions upon the rights of aliens and chiefly

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[1]) Statistics given out by the Foreign Office in Tokio and not controverted by the United States show a decrease of nearly 9000 as follows:

Year	Labourers immigrating to the U. S.	Returning to Japan	Difference
1908	1520	5190	3670
1909	630	4250	3620
1910 (first half)	340	1870	1530

American authorities admit a decrease of 5000. See *Harper's* Weekly, May 3, 1913, page 7.

[2]) Not to speak of various other bills, an alien land act passed the lower House of the legislature on Feb. 28, 1907, but it was dropped on a telegraphic appeal from President Roosevelt; the same thing happened in 1909; and in 1911 Senate passed such a bill and President Taft appealed to the Governor to stop it. It was dropped.

[3]) In the House of Representatives, Congressman Slayden of Texas on January 10, 1907, declared his sympathy with „the white people of San Francisco", and in the Senate on February 16, 1907, Senator Simmons of North Carolina claimed for the Californians the same free hand to deal with the Japanese as the Southern states claim to deal with the negroes. There is, in fact, no resemblance whatever between the conditions in California as regards the Japanese and the conditions in the South as regards the negroes. This is so clear that any attempt to draw a parallel between them must fail, and so far from justifying the same treatment of the Japanese in California as the negroes receive in the South, strongly condemns it.

See also *Aubert*, op. cit., page 293.

directed against the Japanese[1]). Among these were eight alien land acts, that is, acts prohibiting generally the ownership of land in California by aliens. It was soon apparent that any act applicable to all aliens alike, like analagous laws in the states of Delaware, Illinois, Minnesota, Missouri, Oklahoma, Texas, and the District of Columbia (the city of Washington) would offend many nations and especially Great Britain whose subjects own a very large area of land in California, especially mines; besides it was primarily the Japanese at whom this legislation was aimed. So the subterfuge was hit upon of permitting ownership of land in California by „all aliens eligible to citizenship under the laws of the United States" and prohibiting it in the case of „all aliens other than those mentioned"[2]). The latter provision, though general in verbiage, affects only Asiatics. „Free white persons" and „persons of African descent" are eligible to American citizenship by the terms of the Revised Statutes of the Unites States of 1874. There is no law of the United States making the Indians, of which there are several tribes in California, eligible to citizenship; but these would perhaps be held not to fall with the definition of „aliens", though in fact they must be naturalised to become citizens. Their status nationally and internationally has always been anomalous. Though on its face the California Alien Land Act is a discrimination against all Asiatics, no one misunderstood its import or failed to recognise the influences that secured its passage. President *Wilson* plead with the Governor of California and Secretary *Bryan* with its legislature to drop from the bill the reference to aliens ineligible to citizenship because it was a too formal and pointed designation of the Japanese. The debates in the legislature, the agitation in the press, the resolutions of the various Chambers of Commerce of California protesting against the bill, and of labour unions demanding its enactment,

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[1]) For example, there was a bill to increase the licence to Japanese fisherman from ten dollars to one hundred dollars; another to levy a special poll tax on Japanese in plain violation of the treaty of 1911; another to prevent Japanese from owning power engines so as to drive them out of the laundry business, etc., etc.

[2]) For the full text of the act as passed, see page 350 part I of this volume.

the appeals of men prominent in public life, and finally the diplomatic intervention of the Japanese government itself and the active reponse thereto of the American government, all combined to tear the disguise from the Webb bill and leave no doubt that it is in its effect and in its intention primarily and essentially anti-Japanese[1]). It is to be interpreted as simply another incident in the campaign against the „Asiatic Invasion" in which, to the Californian mind, the Japanese are just now the most menacing element.

In passing, it may be conceded that, in the abstract, there are numerous good reasons for prohibiting the ownership of land in the United States by aliens generally, and a fortiori by such aliens as the United States deems unworthy of the privilege of American citizenship. And this was, in effect, the line of argument contained in Governor *Johnson's* reply of May 14, 1913, to Secretary *Bryan*. As a major premise it may be good. But the minor premise (which Governor *Johnson* assumes), that the United States deems the Japanese unworthy of the privilege of American citizenship, may have been true in 1874 when the Revised Statutes were adopted, but it is not true to-day. The marvellous rise of Japan since the fall of the Shoguns in 1868 to an enviable position as a world-power, and the full recognition of its standing as an equal by the United States contradict the assumption. Moreover, it is doubtful in fact who are eligible to American citizenship under the law aforesaid[2]). Hindus, Syrians and numerous Japanese have already been naturalised under this law. The Revised Statutes of 1874 are but a compilation of previous enactments, and the provisions with relation to naturalisation were, in the main, taken from the old acts of April 14, 1802, and May 26, 1824, when the Hermit Kingdom was about as much of a reality to the American mind as the island upon which Sinbad was shipwrecked. That

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[1]) See also Prof. *H. A. Millis* in the „Survey", June 7, 1913.

[2]) It is generally assumed, and some inferior courts in the United States hare held that the Japanese are not „white persons". Their origin has not been sufficiently studied. They are probably a composite race. *Whitney* and *Morgan* believe they are of Caucasian descent. Dr. *Jordan* speaks of them as our „brother Aryans".

situation has changed, and the time is ripe for a more explicit naturalisation act[1]). It would be an act of consistency, as well as of generosity and of justice, to admit to citizenship such Japanese (and there are many of them) as have shown themselves qualified by intelligence and an understanding of American institutions to discharge worthily the duties of citizenship. In 1882, the government of the United States passed an act expressly forbidding the naturalisation of Chinese. Its attitude as to the Japanese may be described as a waiting attitude. In no event can it be correctly said that the government's course is intended to be a declaration of Japanese inferiority, or that its inaction under the circumstances is in itself any criterion to justify the state of California in abridging further the civil rights of the Japanese[2]). Quite the contrary, indeed.

The protests of the Japanese government against the California Alien Land Act have not been made public but it is known that they invoked the Knox-Uchida treaty of 1911 as covering the rights of the Japanese violated by said act. Indeed, the whole discussion at Washington and Sacramento seemed to revolve about the rights guaranteed to the Japanese by treaty. This position appears to the writer too narrow. The treaty of 1911 provides in its first article that „the citizens or subjects of each of the High Contracting Parties shall have liberty to enter, travel and reside in the territories of the other to carry on trade, wholesale and retail, to own or lease and occupy houses, manufactories, warehouses and shops, to employ agents of their choice, to lease land for residential and commercial purposes, and generally to do anything incident to or necessary for trade upon the same terms as native citizens or subjects, submitting themselves to the laws and regulations there established". There is clearly nothing said here about farming as an independent calling, or about the ownership of agricultural lands, from which the Webb bill designs to exclude the Japanese.

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[1]) The antiquated character of the existing law is shown in the now meaningless expression „free (!) white persons".

[2]) Governor *Johnson* sought to throw the onus on the federal government by declaring that it is not California but the federal government that discriminates against the Japanese in the California Alien Land Act.

The expression „reside“ is qualified by the phrase „to carry on trade“ and the expressions „to own or lease and occupy houses“ and „to lease land for residential and commercial purposes“ are qualified by the phrase „and generally to do anything incident to or necessary for trade“. The treaty is entitled a „Treaty of Commerce and Navigation“ and is intended (so the Preamble declares) to fix „the rules which are hereafter to govern the commercial intercourse between their respective countries“ — in other words, international and reciprocal trade, and not the rules to govern non-commercial and purely local relations[1]). Moreover, section two of the Alien Land Act confers upon aliens not eligible to citizenship the right to „acquire, possess, enjoy and transfer“ (but not to transmit or inherit!) real property in California „in the manner, and to the extent and for the purposes prescribed by any treaty now existing“ and „not otherwise“. The purpose of this language is to make the whole law dovetail with the Knox-Uchida treaty and at the same time to confine the rights granted by the treaty within the narrowest possible limits[2]). Thus the provisions of the treaty are adopted by reference into the California law, and it remains for the courts to determine if the whole law is not a contradiction of terms and a nullity. President *Wilson* has offered to extend to the Japanese all the aid in his power in obtaining a judicial determination of the validity or invalidity of the Alien Land Act, but Japan has not yet felt that it was its duty to take the intiative or that it would comport with its dignity to appear as a suppliant in some inferior court of a foreign jurisdiction. It is poor consolation the President has offered and it is insufficient to discharge the country's obligation to Japan.

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[1]) *Strupp, K.*, in Volume VII No. 5 of *Zeitschrift für Völkerrecht*, page 484, arrives at the same conclusion.

[2]) The significance of the words „prescribed by any treaty now existing“ and the absence of any recognition of the terms of future treaties is not to be overlooked. The attempt of this Act to fix the rights of the Japanese for all time by the treaties „now existing“ throws down the gauntlet of defiance to the government of the United States should it ever by subsequent treaty enlarge the rights of the Japanese. California would then precipitate the constitutional conflict which we discuss below.

It is contended for Japan that the Alien Land Act is a violation of the spirit of the Knox-Uchida treaty, if not of its letter[1]). But it is international trade, not domestic agriculture, that is the subject matter, of the treaty. It seems hardly reasonable to believe that the United States government intended by this treaty to nullify all the existing alien land acts in the various States of the Union and in the District of Columbia in favour of the Japanese, and following therefrom also in favour of all other nations claiming the benefit of a most favoured nation clause. Yet this, as the writer believes, would be the legal effect of the treaty, if it be decided that the California statute contravenes the Knox-Uchida treaty. A treaty is the „supreme law of the land" — it overrides not only acts of State legislatures but also the constitutions of the States[2]), and repeals prior Acts of Congress inconsistent therewith as well. What, in fact, is meant by „the spirit of a treaty"? This is a phrase often used but nowhere, it seems, adequately analyzed or defined — nor can we attempt it in this brief review. The spirit of a treaty is often thought of as something separate and apart from the treaty itself — as some kind of vitalising essence that is injected into a dead thing to give it life. This seems an erroneous and dangerous doctrine. The spirit is born with the treaty, it resides within the treaty: the language of the treaty is its expression. The common intention of the parties to the contract is to be gathered from the meaning of language employed by the application of accepted rules of interpretation; and not the meaning of the language from the presumed intention of the parties when the existence of such intention is controverted by one or both of them. Treaties between sovereign nations are contracts of good faith. This cannot be too strongly emphasized in a day when the careless drafting of treaties has occasioned so many charges of violation, and threatened to bring the entire system into suspicion and

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[1]) Cf. the declarations of Messrs. *Uchida* and *Kuraji* quoted by *Kergant* in *Revue politique et parlamentaire,* 1913, partie II, page 113.

[2]) See *Hauenstein* vs. *Lynham,* 100 U. S. Supreme Court Reports (1879), pages 483—491.

disrepute. But the good faith here meant is good faith in the full performance of treaty obligations as contracted; for sovereigns against whom no writ of execution can issue, must be animated by a high sense of international honour. Good faith does not imply liberality, generosity, magnanimity — excellent as these virtues are — in the motives or considerations or intentions prompting a sovereign to negotiate for a treaty with another equal power. Neither the presence nor the absence of these enters into the „spirit" of a treaty. Good faith is not synonymous with the Golden Rule.

Have Japan and the United States the same conception of good faith? Is there a common standard between them by which to gauge what the „spirit of a treaty" requires of a party? Do Japanese and Americans entertain different ideals as to the obligations flowing from the treaty relation? We think it quite possible. Different in religion, different in music, in art, in literature and in speech, different in social customs, in race and in history, the less play there is given to the „spirit" in compacts between them, the less likely misunderstandings will arise. „The whole of the Japanese mental superstructure", says *Lafcadio Hearn,* „evolves into forms having nothing in common with Western psychological development: the expression of thought becomes regulated, and the expression of emotion inhibited in ways that bewilder and astound. The ideas of this people are not our ideas; their sentiments are not our sentiments; their ethical life represents for us regions of thought and emotion yet unexplored, or perhaps long forgotten. Could you learn all the words in a Japanese dictionary, your acquisition would not help you in the least to make yourself understood in speaking, unless you had learned also to think like a Japanese — that is to say, to think backwards, to think upside-down and inside-out, to think in directions totally foreign to Aryan habit" [1]).

Treaties have long ceased to be the secret agreements of despots. They are now the law of the land by which not only

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[1]) „Japan — an Attempt at Interpretation" (1904), pages 13, 14.

the government but the people as well, collectively and individually, are bound to regulate their conduct. It is not enough that regard be had solely to the sentiments of the contracting agents. The fact must not be lost to view that the peoples affected have to be reckoned with: that their habit of thought and their mental attitude toward a particular international compact are also factors in determining what constitutes the „spirit of the treaty". In the United States this principle is recognized and enforced by the courts in the interpretation of treaties made with Indian tribes (sometimes called nations). Effect is always given in case of doubt to the meaning of the treaty as understood by the Indians. Treaties between the United States and the Indians are contracts. Yet by reason of the difference in the character of the parties, difference in their mental horizon and in their conception of the contractual relation, an exceptional rule of interpretation and construction is applied, founded upon a broad public policy and without regard to the intelligence of the contracting agents.

Japan is the equal of the United States in the family of nations. It is entitled to demand at the hands of every other nation for itself and its subjects all the rights and immunities recognized by international law. Out of the principle of the perfect equality of nations spring the right and the correlative obligation of mutual respect of the moral dignity and the political personality of nations. Discriminatory legislation, such as the California Alien Land Act, directed against a particular nation and singling its subjects out for disfavour violates this obligation. The gravity of the transgression in this instance is heightened by the fact that it is but one more of a series of highly offensive insults, and by the further fact that these were manifestly the product chiefly of race prejudice and were not provoked by Japan nor justified by any public emergency[1]).

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[1]) The most recent statistics show that these are 41 356 Japanese in California (total population 2 377 549); of these about 4500 were engaged in farming and they own some 12 700 acres (less than the area of a single township); the total area of land owned and leased by Japanese being twelve hundredths of one per cent of California's area (99 000 000 acres).

Turning now to the internal situation, we find the same constitutional hindrances confronting the federal government of the United States as arose in the school controversy of 1906. The extent and scope of the treaty-making power is again in dispute. The Constitution of the United States, it is true, declares that all „treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land", but just where that „authority" begins and ends has not yet been fully determined. All governmental powers not delegated by the federal compact to the United States nor prohibited to the component states, „are reserved to the states respectively or to the people". It is contended that nowhere in the written constitution has the authority been delegated to the United States to regulate the disposition of land within the several states; that this is a purely local question that falls within the police power of the several states; that a treaty has no greater authority than an act of Congress and is equally powerless to invade the domain of local legislation. We believe this argument erroneous. The power of the federal government to make treaties is conferred without express limitation whereas the power to enact laws is confined to enumerated matters. The states are expressly prohibited from entering into any treaty with a foreign power[1]). The states have no „reserved powers" as to the making of treaties — they have surrendered this power completely to the federal government. The United States government may negotiate treaties for them collectively or singly. It may conclude for a single state any treaty that the latter would have been competent to make had it never come into the Union. The United States has power to conclude a treaty with Japan affecting only the state of California and only the internal affairs of said state. It is quite conceivable that there may be local conditions so different in various states of the Union as to make expedient special provisions in a treaty that shall be applicable only in particular states. How else, in the interest of the states themselves, could such a situation

[1]) Article VI, Article I Section 8, Article I Section 10 of the Constitution of the United States.

be met? There is no provision in the Constitution requiring treaties like federal laws to be uniform in their operation throughout the several states.

If, as we believe, the California Alien Land Act, does not violate the Knox-Uchida treaty, any further elaboration of this phase of the controversy is superfluous. The international rights of Japan as a friendly power are not circumscribed by the Knox-Uchida treaty. The courts of the United States have on various occasions solemnly declared that the law of nations is in the United States a part of the law of the land, and there is no doubt, in the light of past experience, that the federal courts will annul the act of any state legislature that conflicts with the international obligations of the United States toward a friendly power. An international arbitration is unnecessary, impractical, and the demand for it, in our humble judgment, impolitic. There is no controversy between the United States and Japan — they are agreed on all essentials. The controversy is between the United States and a recalcitrant state which persists in defying the public sentiment of forty sister commonwealths and in jeopardising the nation by its forgetfulness of the moral and patriotic obligations resting upon each member of the Union. The Supreme Court of the United States is the greatest arbitration court in the world. It has decided more than sixty conflicts between the states of the Union relating to matters as to which they are as sovereign as independent nations; it has decided with equal impartiality innumerable conflicts between the states and the central government; it has been just, yea magnanimous, even with the public enemy of the Unites States, going so far in a recent instance as to award him a decree for damages against the sovereign United States. The humblest subject of Japan who will carry his appeal against the Webb bill before this great tribunal will stand there clothed with the honour and the prestige of the whole Japanese nation, and these will be fully respected and vindicated.

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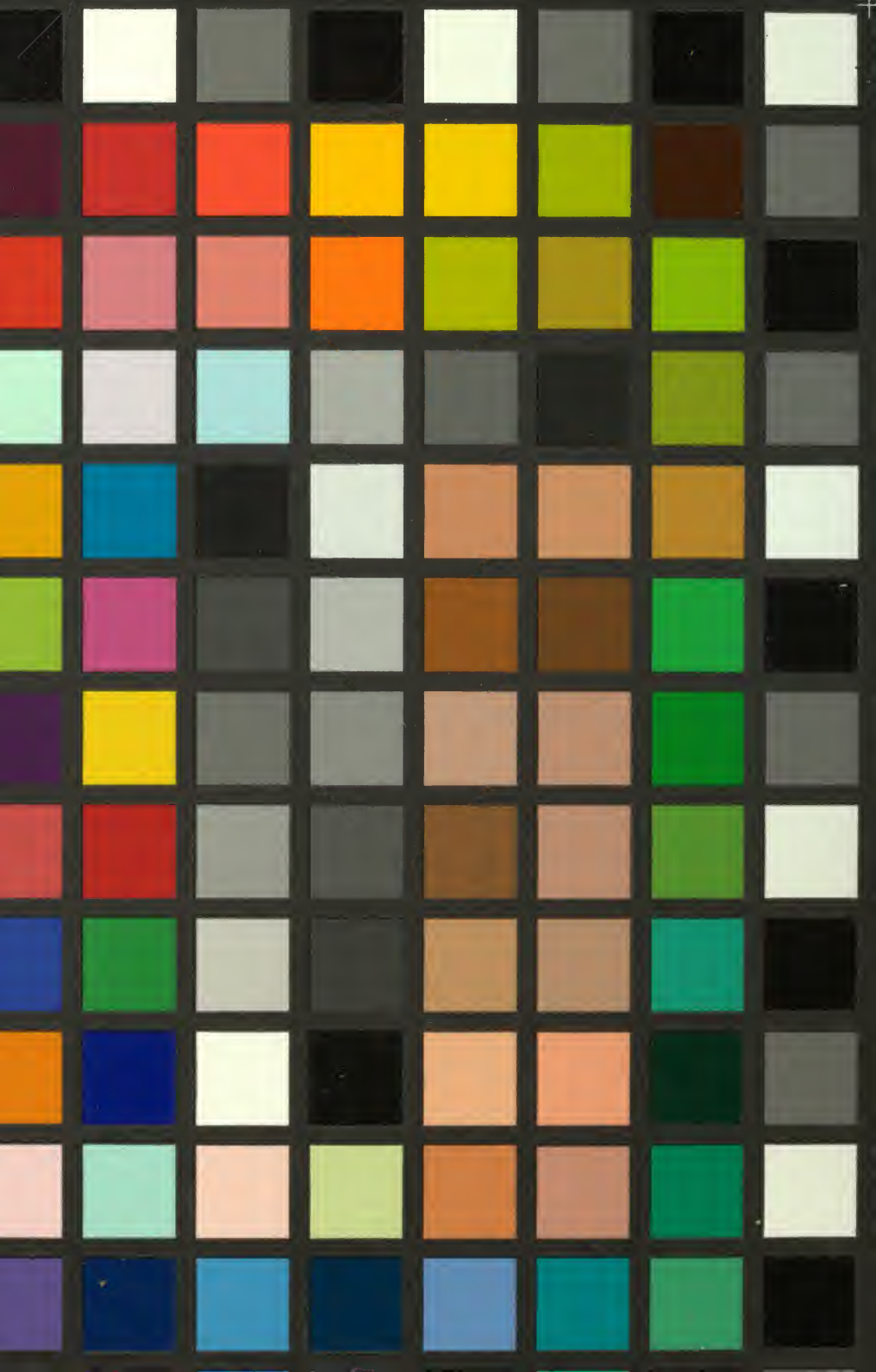
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